

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



**CORRECTED
FISCAL NOTE**

HB 2136 - SB 2095

April 21, 2009

SUMMARY OF BILL: Requires physicians to administer a toxicology test on a newborn that is believed to be suffering from withdrawal from neonatal abstinence syndrome because the mother used alcohol or drugs during the pregnancy. Prohibits a health care facility from discharging an infant who is suffering from withdrawal from neonatal abstinence syndrome until such infant has been treated and has reached maximum medical improvement. Prohibits the use of information, interviews, reports, statements, memoranda, and drug and alcohol test results received through the program from being used as evidence in any criminal proceeding against the mother of the child who was subject to the test. All information concerning drug or alcohol test results is confidential. Requires the Department of Health and the Bureau of TennCare to work with physicians to provide opportunities for indigent women who are pregnant to receive treatment for addiction to alcohol or controlled substance and to work with those indigent women to provide assistance to their infants. Requires the Department of Health to adopt rules for the drug and alcohol testing program including standards for licensing drug and alcohol testing laboratories and revocation of those licenses, body specimens and minimum specimen amounts for testing, methods for analysis and procedures for testing and standards for the initial tests and confirmation tests, minimum cut-off detection levels for alcohol and each drug for determining positive test results, chain-of-custody procedures, and retention, storage, and transportation procedures for tests and results. Requires physicians who determine that newborn is suffering from neonatal abstinence syndrome to notify the Department of Children's Services and the infant. The Commissioner of the Department of Health shall submit proposed rules to the Health and Human Resources Committee of the House of Representatives and the Senate General Welfare, Health and Human Resources Committee for review and comment at least 45 days prior to implementation.

ESTIMATED FISCAL IMPACT:

On March 31, 2009, we issued a fiscal note for this bill indicating an *increase in state expenditures exceeding \$100,000. A more precise cost estimate was not possible because the Department of Health did not provide any information*

to assist in the preparation of the fiscal note. Based on information from the Department of Correction, the fiscal impact for this bill is estimated as follows:

(CORRECTED)

Increase State Expenditures – Exceeds \$100,000

Decrease State Expenditures - \$100,500/Incarceration

A more precise cost estimate is not possible because the Department of Health has not provided any information to assist in the preparation of this fiscal note.

Assumptions:

- The Bureau of Alcohol and Drug Abuse Services was transferred to the Department of Mental Health and Developmental Disabilities (DMHDD) by Executive Order 44 dated February 23, 2007. Currently, the Department of Health does not license or provide drug and alcohol treatment services.
- It is estimated the Department would incur a significant increase in expenditures to establish licensure standards for testing laboratories, determine appropriate specimens for testing, establish standards for testing analysis and procedures, and retention, storage and transportation of tests.
- The Department would also incur a significant increase in expenditures to provide treatment for an indigent woman and her infant that is suffering from neonatal abstinence syndrome.
- It is estimated that the increase in expenditures to the Department of Health will exceed \$100,000.
- The Department of Children's Services will not incur a significant increase in expenditures to accept notification from physicians. These cases usually come to the attention of the Department and are currently investigated.
- The Bureau of TennCare estimates that any tests and treatment required will be medically necessary. Any cost can be accommodated within existing resources without an increased appropriation or reduced reversion.
- If a physician has reason to believe a mother used alcohol or a controlled substance for a non-medical purpose during a pregnancy and an infant is suffering from neonatal abstinence syndrome as a result, the physician is required to administer a toxicology test to determine

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where there is evidence of prenatal exposure. This bill prohibits the use of information obtained through such testing from being used in a criminal proceeding against the mother and as a result there will be a decrease in admissions for the Department of Correction (DOC). These types of cases would currently be prosecuted as child abuse or neglect, aggravated child abuse or neglect, or criminally negligent homicide depending on the degree of injury to the child.

- According to DOC, there has been an average of 10 admissions for the Class A felony offense of aggravated child abuse or neglect where the victim was six years old or younger and an average of 37 admissions for the Class E felony offense of child abuse or neglect where the victim was six years old or younger in each of the past 10 years. DOC estimates a reduction of two percent in these admissions as a result of this bill. One fewer admission for the Class E felony offense of child abuse or neglect each year and a decrease in the Class A felony offense of aggravated child abuse or neglect of one every five years.
- According to DOC, the average post-conviction time served for a Class E felony is 1.63 years and 14.86 for a Class A felony. The cost per offender at 1.63 years is \$35,548.11 (\$59.80 x 594.45 days) and the cost per offender at 14.86 years is \$324,636.26 (\$59.80 x 5,428.70 days). One fewer Class E felony each year will result in a reduction of \$35,548.11.
- The annualized time served per conviction for a Class A felony is 1,085.74 days time served (5,428.70 x .20 annual number of convictions). The annualized cost per conviction is \$64,927.25 (\$59.80 x 1,085.74 days). Every five years, one fewer Class A felony will result in a reduction of \$64,927.25. Total reduction in incarceration costs is \$100,475.36 (\$64,927.25 + \$35,548.11).

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/kml